



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 555

IN THE MATTER OF HAROLD R. PARTAMIAN

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Harold R. Partamian ("Partamian") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 9, 1995, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Partamian. The Commission has concluded its inquiry and, on June 12, 1996, voted to find reasonable cause to believe that Partamian violated G.L. c. 268A.

The Commission and Partamian now agree to the following findings of fact and conclusions of law:

1. Partamian was the executive secretary of the state Board of Registration in Pharmacy ("Board") from July 1987 to February 1994.^{1/} This was a full-time salaried position. Prior to becoming the Board executive secretary, Partamian was a pharmacy investigator^{2/} for the Board, from 1980 until July 1987. As the Board executive secretary and as a pharmacy investigator, Partamian was, at all times here relevant, a state employee as that term is defined in G.L. c. 268A, §1(q).

2. During most of his state employment, Partamian, who is a registered pharmacist, was privately employed on a part-time (Saturdays) basis as a pharmacist. From 1982 to 1984, Partamian worked at the Hill View Pharmacy in North Reading. From 1984 to December 10, 1993, Partamian worked at a pharmacy in Woburn owned by Insta-Care Pharmacy Service Corporation ("Insta-Care"). From this private part-time work, Partamian annually earned between \$5,000 and \$8,000.

3. In 1982, Partamian requested and received an advisory opinion (*EC-COI-82-95*) from the Commission concerning possible conflicts between his work for the Board and his part-time private employment. The Commission informed Partamian that he would be unable to participate as a pharmacy investigator in any matter concerning the pharmacy for which he worked or concerning any of its geographical competitors. In 1987, when Partamian became the Board executive secretary, he asked the Commission to update the opinion previously issued to him. In a Commission staff letter, dated June 19, 1987, the Legal Division of the Commission reaffirmed *EC-COI-82-95*, stating "...you must continue to refrain from participating as [the Board executive secretary] in any matter affecting either the pharmacy which employs you on Saturdays or its geographical competitors."

4. Partamian failed to do as he was advised by the Commission's Legal Division. In a July 1992 disposition agreement with the Commission, Partamian was fined \$1,000 for violating G.L. c. 268A, §6, by, in 1986 and 1987, as a pharmacy investigator, investigating two complaints which had been filed with the Board against Insta-Care and, as Board executive secretary, signing a report on behalf of the Board relating to a third investigation concerning Insta-Care indicating that the Board had resolved that investigation without a finding of a violation.^{3/}

5. Despite the 1992 disposition agreement and the 1993 "Formal Warning," Partamian continued to take actions as Board executive secretary concerning matters affecting Insta-Care, as set forth in the following

paragraphs.

6. On July 12, 1993 and November 4, 1993, Partamian, as Board executive secretary, issued notices of informal Board conferences to Insta-Care.^{4/} The notices informed Insta-Care of pending allegations and warned that failure to attend the scheduled hearings could result in disciplinary action. Partamian also, as Board executive secretary, rescheduled informal Board conferences concerning Insta-Care from August 24, 1993 to September 14, 1993 and then to December 7, 1993.^{5/}

7. On November 24, 1993, Partamian, as Board executive secretary, took part in a Board meeting concerning alleged illegal distribution of controlled substances at an Insta-Care wholesale pharmacy. Partamian took the minutes of the meeting and advised the Board on procedure. Some time after the meeting had been concluded, Partamian polled the Board members regarding the issue of whether the Insta-Care wholesale pharmacy should be closed.^{6/} The Board decided to close the Insta-Care wholesale pharmacy pending an imminent danger hearing.

8. On November 30 and December 7, 1993, Partamian, as Board executive secretary, took part in imminent danger hearings concerning the above-mentioned Insta-Care wholesale pharmacy which had been scheduled to determine whether the pharmacy should remain closed. Partamian, as Board executive secretary, scheduled and tape-recorded the hearings and was present at the Board's deliberative executive sessions concerning how the matters should be handled.^{7/}

9. On December 3, 1993, Partamian, in accordance with his routine practice as Board executive secretary, answered a telephone call, which turned out to be a complaint call concerning alleged safety problems involving an Insta-Care pharmacy. During this telephone conversation, Partamian gave the complainant advice as to how to informally deal with Insta-Care concerning the alleged problems. Partamian also advised the complainant that the complainant could either try to resolve the matter informally with Insta-Care or submit to the Board in writing full particulars regarding the alleged problems. Despite the fact that the matter involved Insta-Care, Partamian failed to tell the complainant to send any complaint to the Board to the attention of the Board chairman and not to himself. Partamian did not inform the Board or the Division Director that he had received the telephone complaint concerning Insta-Care.

10. On or about December 6, 1993, the December 3, 1993 telephone complainant mailed to the Board a written complaint (together with supporting documents) concerning the alleged safety violations on the part of the Insta-Care pharmacy. The complaint letter was addressed to Partamian, as Board executive secretary. Thereafter, after determining the contents of the letter and that it concerned Insta-Care, Partamian did not turn the letter and the supporting documents over to the Board or to the Division Director and he did not advise either the Board or the Division Director that he had received the written complaint. Nor did Partamian turn the complaint letter and supporting documents over to the Division's Investigative Unit. Instead, Partamian placed the complaint letter and the supporting documents in his desk and subsequently failed to take any further action on the complaint. The complaint letter and supporting documents remained in Partamian's desk until after he left his position as Board executive secretary in February 1994.^{8/}

11. As a result of Partamian's actions and omissions, the December 3, 1993 telephone complainant's information concerning the alleged safety violations by Insta-Care was not properly processed until the December 6, 1993 complaint letter was found in Partamian's desk after he left his employment with the Board in February 1994.

12. On December 10, 1993, Partamian was laid off from his part-time employment at Insta-Care.

13. Section 6 of G.L. c. 268A, except as otherwise provided in that section,^{9/} prohibits a state employee from participating^{10/} as such in a particular matter^{11/} in which, to his knowledge, a business organization by which he is employed has a financial interest.^{12/} None of the exemptions to §6 is applicable in this case. At no time did Partamian receive a §6 exemption to participate as Board executive secretary in matters in which Insta-Care had a financial interest.^{13/}

14. The informal Board conferences, Board meetings, imminent danger hearings and complaints concerning Insta-Care described above in paragraphs 6 through 11 of this Agreement were particular matters within the meaning of G.L. c. 268A.

15. Partamian's part-time employer, Insta-Care, had a financial interest known to Partamian in each of the above-described particular matters concerning it which were before the Board or were the subject of investigation by the Division. Each such matter involved allegations of improper conduct by Insta-Care in its pharmacy business in Massachusetts, which might, if true, have led to the Board's taking action prejudicial to Insta-Care's pharmacy business activities in the Commonwealth.

16. As described above, between June and December 1993, Partamian, as Board executive secretary, took part in particular matters relating to Insta-Care. Partamian's involvement in these particular matters ranged from routine administrative actions (*e.g.*, tape-recording hearings) to acts entailing the exercise of significant discretion (*e.g.*, handling the telephone and written complaints concerning Insta-Care).^{14/} Partamian's advice to the telephone complainant on December 3, 1993 concerning how to resolve the complaint informally, Partamian's failure to turn the December 6, 1993 complaint letter over to the Board, to the Division Director or to the Division's Investigative Unit, and Partamian's retaining possession of the complaint letter in his desk were each acts of personal and substantial participation by Partamian as Board executive secretary in particular matters in which Insta-Care had a financial interest.

17. Thus, as Board executive secretary, Partamian participated officially as a state employee in particular matters in which, to his knowledge, his private employer had a financial interest. In so doing, Partamian violated G.L. c. 268A, §6.

In view of the foregoing violations of G.L. c. 268A by Partamian, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Partamian:

(1) that Partamian pay to the Commission the sum of three thousand two hundred and fifty dollars (\$3,250.00) as a civil penalty for violating G.L. c. 268A;^{15/} and

(2) that Partamian waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 26, 1996

^{1/} Partamian was appointed executive secretary by the Board. Under a subsequent reorganization, while Partamian was Board executive secretary, the Board, together with other State boards of registration, became part of the Division of Registration ("Division"). Since the re-organization, all executive secretaries of the boards of registration within the Division are appointed by, report to and are subject to removal by the Division Director.

^{2/} Partamian's statutory position was that of "agent" of the Board under G.L. c. 13, §25.

^{3/} In addition, Partamian was fined an additional \$500 in the 1992 disposition agreement for violating G.L. c. 268B, §7 by failing to disclose his Insta-Care income on his 1987 and 1988 statements of financial interests. Also, in a February 18, 1993 "Formal Written Warning", the Division Director reminded Partamian of his duty as an executive secretary to report to the Division Director any matter which might pose a conflict of interest.

^{4/} According to Partamian, these conference notices were issued at the Board's direction.

^{5/} According to Partamian, these hearing and conference schedulings and reschedulings were consistent with usual Board practice.

^{6/} According to Partamian, the usual procedure was for the executive secretary to poll the Board members by telephone some time after the meeting had adjourned.

^{7/} At the December 7, 1993 meeting, Partamian, in response to an inquiry directed toward him by one of the Board members, started to explain the procedure generally followed by the Board in a given instance, when the Board's legal counsel, who was also present, admonished Partamian that his answering could pose a conflict of interest because of his employment with Insta-Care. Partamian did not complete his answer and did not further contribute to the meeting.

^{8/} According to Partamian, he did not deliberately keep the complaint letter and supporting documents in his desk to delay any investigation of Insta-Care or to otherwise benefit the company.

^{9/} Section 6 requires a state employee whose duties would otherwise require him to participate in a particular matter in which there is a prohibited financial interest to advise his appointing official and the Commission in writing of the nature and circumstances of the particular matter and make full disclosure of the financial interest. The appointing official must then either assign the matter to another employee, or assume responsibility for the matter, or make a written determination (and file it with the Commission) that the financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services (in which case the employee may participate in the matter).

^{10/} "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{11/} "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{12/} "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133, 345 N.E. 2d 888 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. See *EC-COI-84-96*.

^{13/} At no time did Partamian make the disclosures required by §6 to the Division Director, who was, at the relevant time, Partamian's "appointing official."

^{14/} While some of Partamian's actions were apparently sufficiently routine and non-discretionary as to be ministerial, and thus not participation for G.L. c. 268A purposes, on several occasions Partamian's actions amounted to personal and substantial official participation in particular matters in which Insta-Care had a financial interest.

^{15/} That a \$3,250 fine has been imposed in this case is reflective of the seriousness of the violations, in and of themselves, and of the exacerbating circumstances of Partamian's failure to reform his conduct following his 1992 disposition agreement with the Commission. That a higher fine has not been imposed is due in part to the fact that Partamian resigned from his position as Board executive secretary in lieu of facing the prospect of a formal discharge based on essentially the same reasons as those enumerated in this Agreement.